

From the INTERNATIONAL BUREAU

PCT

NOTIFICATION OF TRANSMITTAL
OF COPIES OF TRANSLATION
OF THE INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY
(CHAPTER I OR CHAPTER II
OF THE PATENT COOPERATION TREATY)
(PCT Rule 72.2)

To:

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| Date of mailing (<i>day/month/year</i>) 21 July 2005 (21.07.2005) | |
| Applicant's or agent's file reference N 7220/WM | IMPORTANT NOTIFICATION |
| International application No. PCT/EP2003/014153 | International filing date (<i>day/month/year</i>) 12 December 2003 (12.12.2003) |
| Applicant NEUBOURG SKIN CARE GMBH & CO. KG et al | |

1. Transmittal of the translation to the applicant.

The International Bureau transmits herewith a copy of the English translation made by the International Bureau of the international preliminary examination report established by the International Preliminary Examining Authority.

2. Transmittal of the copy of the translation to the elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following elected Offices requiring such translation:

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3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report.

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

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| The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland | Authorized officer Agnes Wittmann-Regis |
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Translation

PATENT COOPERATION TREATY

PCT/EP2003/014153



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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|---|---|---|
| Applicant's or agent's file reference N 7220/WM | FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) | |
| International application No. PCT/EP2003/014153 | International filing date (day/month/year) 12 December 2003 (12.12.2003) | Priority date (day/month/year) 12 December 2002 (12.12.2002) |
| International Patent Classification (IPC) or national classification and IPC A61K 7/00 | | |
| Applicant NEUBOURG SKIN CARE GMBH & CO. KG | | |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 4 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

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| Date of submission of the demand 09 July 2004 (09.07.2004) | Date of completion of this report 17 March 2005 (17.03.2005) |
| Name and mailing address of the IPEA/EP | Authorized officer |
| Facsimile No. | Telephone No. |

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/014153

I. Basis of the report

1. This report has been drawn on the basis of (Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.):

- ☐ the international application as originally filed.
- ☒ the description, pages 1-10, as originally filed,
pages _____, filed with the demand,
pages _____, filed with the letter of _____,
pages _____, filed with the letter of _____.
- ☒ the claims, Nos. _____, as originally filed,
Nos. _____, as amended under Article 19,
Nos. _____, filed with the demand,
Nos. 1-17, filed with the letter of 17 December 2004 (17.12.2004),
Nos. _____, filed with the letter of _____.
- ☐ the drawings, sheets/fig _____, as originally filed,
sheets/fig _____, filed with the demand,
sheets/fig _____, filed with the letter of _____,
sheets/fig _____, filed with the letter of _____.

2. The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

3. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

4. Additional observations, if necessary:

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | | |
|-------------------------------|--------|------|-----|
| Novelty (N) | Claims | 1-8 | YES |
| | Claims | 9-17 | NO |
| Inventive step (IS) | Claims | 1-8 | YES |
| | Claims | 9-17 | NO |
| Industrial applicability (IA) | Claims | 1-17 | YES |
| | Claims | | NO |

2. Citations and explanations

Reference is made to the following documents:

D1: FR-A-2 217 405

D2: WO-A-99/08649

D3: WO-A-98/31339.

1. (PCT Article 33(2) and (3)).

1.1. None of the available documents discloses a method for the production of stable foaming creams as per claim 1.

There is no suggestion in the prior art that the stability of a foaming cream can be improved by heat treatment.

The subject matter of claim 1 and dependent claims 2-8 is novel and inventive in relation to the cited documents.

1.2. Product-by-process claims 9-17 must be interpreted in an absolute sense, that is, independently of the method, as being directed to the products *per se*.

Although it can be assumed that the heat treatment as per claim 1 results in a stable structure of the foaming creams (see the letter of reply of 17 December 2004, page 3, lines 8 to 11), claims 9-17 are nevertheless not novel, because they are not restricted to a foaming cream produced by the

method as per claims 1-8. Foaming creams of this nature are not novel in relation to documents D1 to D3:

D1 discloses foaming creams containing:

- a) lipophilic components (C_{10} - C_{22} fatty acids (see D1, page 4, lines 16 to 21, page 8, line 1));
- b) hydrophilic components (triethanolamine, sorbitol (see D1, page 8, lines 11 to 15)); and
- c) propellant gas (isobutane (see D1, page 8, line 32)).

D1 also discloses a method for the production of foaming creams in which the foaming creams are subjected to heat treatment (see D1, page 8, lines 36 to 39).

Consequently, the subject matter of claims 9, 11-15 and 17 cannot be considered novel in relation to D1 (PCT Article 33(2)).

D2 discloses foaming creams containing:

- a) lipophilic components (C_{12} - C_{22} fatty acids (page 5, last paragraph));
- b) hydrophilic components (propylene glycol, glycerin (page 4, lines 22 and 23, page 6, second paragraph)); and
- c) propellant gas (page 5, line 4, example 1).

Consequently, the subject matter of claims 9 and 12-17 cannot be considered novel in relation to D2 (PCT Article 33(2)).

D3 likewise discloses foaming creams containing:

lipophilic and hydrophilic components (see page 4, second paragraph) and a propellant gas (page 14 to page 15, first paragraph; claims 1-8 and 11).

Consequently, the subject matter of claims 9 and 12-15 cannot be considered novel in relation to D3 (PCT Article 33(2)).

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2. (PCT Article 5).

Claim 10 falls outside the scope of claim 1, because the characterizing features of the heat treatment are different to the features specified in claim 1.

(35 U.S.C. 371(c)(5)).

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NEUBOURG SKIN CARE GMBH & CO. KG

Translation of new claims attached to the IPER

Claims

1. A method for the manufacture of a stable foam cream comprising lipophilic and hydrophilic components and a propellant gas, characterized in that in said method a cream preparation comprising lipophilic and hydrophilic components is prepared,
 - then, propellant gas is added so that a foam cream is formed and the foam cream is subjected to a heat treatment,
 - and/or the propellant gas is heated before and/or during the addition to the cream preparation,
 - wherein the heat treatment is carried out for at least one hour at at least 30°C, or for at least 5 minutes at at least 40°C.
2. Method according to claim 1, characterized in that the foam cream is provided as a two phase system.
3. Method according to any one of claims 1 or 2, characterized in that the lipophilic components are selected from fatty acids and dimethyl polysiloxanes, and the hydrophilic components are selected from the group consisting of triethanol amine, mono propylene glycol, glycerine, sorbitol, poly(ethylene glycol) and poly(vinyl pyrrolidone).
4. Method according to any one of claims 1 to 3, characterized in that the foam cream comprises C₁₀-to C₂₂-fatty acids, emulsifiers and coemulsifiers.
5. Method according to any one of claims 1 to 4, characterized in that the foam cream comprises
 - 4 to 15 percent by weight of oil-in-water emulsifier,

- 1 to 10 percent by weight of fatty acid,
- 0.4 to 2.3 percent by weight of moisturiser,
- 0.05 to 1 percent by weight of skin care agent, and
- water balancing to 100 percent by weight.

6. Method according to any one of claims 1 to 5, characterized in that the foam creams comprises

- 1 to 3 percent by weight of glyceryl stearate,
- 3 to 6 percent by weight cetearyl alcohol,
- 4 to 6 percent by weight of stearic acid,
- 0.5 to 2 percent of weight of paraffin,
- 0.4 to 2.3 percent by weight of triceteareth-4-phosphate,
- 1.5 to 4 percent by weight propylene glycol,
- 1.3 to 4.2 percent by weight of glycerine,
- 1 to 3 percent by weight of cetyl-sarcosinate,
- 0.05 to 1 percent by weight of allantoin and
- water balancing to 100 percent by weight.

7. Method according to any one of claims 1 to 6, characterized in that the foam cream additionally comprises hydrating (moisture binding) substances like urea, ethoxy diglycol, sodium chloride, magnesium chloride, sorbit, dexpanthenol, sodium lactate and/or additives like clotrimazol, oak bark extract, sage, rosemary, arnica, aloe vera, panthenol and/or camphor.

8. Method according to any one of claims 1 to 7, characterized in that the foam cream collapses, or partly collapses, after addition of the propellant gas and before conducting the heat treatment.

9. Stable foam cream, obtainable by a method according to any one of claims 1 to 8.

10. Stable foam cream according to claim 9, comprising lipophilic and hydrophilic components and a propellant gas, obtainable by subjecting the foam cream to a heat treatment, characterized in that the heat treatment is carried out for a time period of at least 5 minutes and/or for 5 minutes to 20 hours at 30 to 75°C.

11. Stable foam cream according to claims 9 or 10, characterized in that the heat treatment is conducted after addition of the propellant gas.

12. Stable foam cream according to one of claims 9 to 11, characterized in that the foam cream is a two phase system.

13. Stable foam cream according to any one of claims 9 to 12, characterized in that the lipophilic components are selected from fatty acids and dimethyl polysiloxanes and the hydrophilic components are selected from the group consisting of triethanol amine, mono propylene glycol, glycerine, sorbitol, poly(ethylene glycol) and poly(vinyl pyrrolidone).

14. Stable foam cream according to any one of claims 9 to 13, characterized in that the foam cream comprises C₁₀-to C₂₂-fatty acids, emulsifiers and coemulsifiers.

15. Stable foam cream according to any one of claims 9 to 14, characterized in that the foam cream comprises

- 4 to 15 percent by weight of oil-in-water emulsifier,
- 1 to 10 percent by weight of fatty acid,
- 0.4 to 2.3 percent by weight moisturiser,
- 0.05 to 1 percent by weight skin care agent and

- water balancing to 100 percent by weight.

16. Stable foam cream according to any one of claims 9 to 15, characterized in that the foam cream comprises

- 1 to 3 percent by weight of glyceryl stearate,
- 3 to 6 percent by weight cetearyl alcohol,
- 4 to 6 percent by weight of stearic acid,
- 0.5 to 2 percent of weight of paraffin,
- 0.4 to 2.3 percent by weight of triceteareth-4-phosphate,
- 1.5 to 4 percent by weight propylene glycol,
- 1.3 to 4.2 percent by weight of glycerine,
- 1 to 3 percent by weight of cetyl-sarcosinate,
- 0.05 to 1 percent by weight of allantoin, and
- water balancing to 100 percent by weight.

17. Stable foam cream according to any one of claims 9 to 16, characterized in that the foam cream additionally comprises hydrating (moisture binding) substances like urea, ethoxy diglycol, sodium chloride, magnesium chloride, sorbit, dexpanthenol, sodium lactate and/or additives like clotrimazol, oak bark extract, sage, rosemary, arnica, aloe vera, panthenol and/or camphor.